

1 **A BILL**

2  
3 To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery  
4 Conservation and Management Act for fiscal years 2006 through 2010, and for other purposes.  
5

6 *Be it enacted by the Senate and the House of Representatives of the United States of*  
7 *America in Congress assembled, That*

8 **SECTION 1. SHORT TITLE.**

9 This Act may be cited as the "Fishery Conservation and Management Amendments Act of  
10 2005".

11 **SEC. 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY CONSERVATION**  
12 **AND MANAGEMENT ACT.**

13 Except as otherwise expressly provided, whenever in this Act an amendment or repeal is  
14 expressed in terms of an amendment to, or repeal of, a section or other provision, the reference  
15 shall be considered to be made to a section or other provision of the Magnuson-Stevens Fishery  
16 Conservation and Management Act (16 U.S.C. §1801 et seq.).

17 **SEC. 3. DEFINITIONS.**

18 (a) BYCATCH. – Section 3 (16 U.S.C. §1801) is amended by-

19 (1) striking paragraph (2) of Section 3; and

20 (2) inserting in its place: “(2) The term “bycatch” means fish that are harvested in a fishery,  
21 but that are not sold or kept for personal use, and includes economic discards and  
22 regulatory discards. The term also includes any seabirds incidentally taken in the fishery.

1       Such term does not include fish that are caught and released alive by a recreational  
2       fisherman.”

3       (3) IMPLEMENTATION. – Not later than 24 months after the date of enactment of this Act,  
4       each Regional Fishery Management Council shall submit to the Secretary of Commerce  
5       amendments to each fishery management plan under its authority to comply with the  
6       amendments made in subsection (a)(2) of this section.

7       (b) CONFIDENTIAL INFORMATION. – Section 3 (16 U.S.C. §1802) is amended by-

8       (1) redesignating existing paragraphs (5) through (8) of Section 3 as paragraphs (6) through  
9       (9), respectively; and

10      (2) inserting after paragraph (4) of Section 3 the following new paragraph-

11      “(5) The term “confidential information” as used in section 402 of this Act means trade  
12      secrets, or commercial or financial information the disclosure of which is likely to  
13      result in substantial harm to the competitive position of the person who submitted the  
14      information to the Secretary.”.

15      (c) CONTINENTAL SHELF FISHERY RESOURCES. – Paragraph 8 of Section 3 (16 U.S.C.  
16      §1802), as so redesignated, is amended by-

17      (1) striking the “and” after “Surf Clam—*Spisula solidissima*,”;

18      (2) striking the period after “Ocean Quahog—*Arctica islandica*” and inserting a semicolon in  
19      its place;

20      (3) listing the following after the semicolon-

21      “Arctic Surfclam—*Mactromeris polynyma*;

22      “Icelandic Scallop—*Chlamys islandica*;

1 “Greenland Cockle—*Serripes groenlandicus*; and

2 “Propeller Clam—*Cyrtodaria siliqua*.”; and

3 (4) listing after “Yellow Sponge—*Spongia barbera*.” the following-

4 “ECHINODERMATA

5 “Sea Cucumber—*Cucumaria frondosa*.”.

6 (d) DEPLETED. – Section 3 (16 U.S.C. §1802) is amended by inserting the following new  
7 paragraph after paragraph (9), as so redesignated-

8 “(10) The term “depleted” means a fishery whose abundance is at or below a level that  
9 jeopardizes the capacity of the fishery to produce maximum sustainable yield on a continuing  
10 basis.”

11 (e) ECOSYSTEM. – Section 3 (16 U.S.C. §1802) is amended by-

12 (1) redesignating existing paragraph (9) of Section 3 as paragraph (11); and

13 (2) inserting after paragraph (11), as so redesignated, a new paragraph as follows-

14 “(12) The term “ecosystem” means a geographically specified system of living marine  
15 resources, the people, the environment, and the processes that control its dynamics.”.

16 (f) EXCLUSIVE ECONOMIC ZONE . – Section 3 (16 U.S.C. § 1802) is amended by-

17 (1) redesignating existing paragraphs (10) and (11) of Section 3 as paragraphs (13) and (14)  
18 respectively;

19 (2) striking the text of paragraph (14), as so redesignated; and

20 (3) inserting as follows-

21 “(14) The term “Exclusive Economic Zone” means, unless otherwise specified by the  
22 President in the public interest in a writing published in the *Federal Register*, a zone,

1 the outer boundary of which is 200 nautical miles from the baseline from which the  
2 breadth of the territorial sea is measured, except as established by a maritime boundary  
3 treaty in force for, or being provisionally applied by, the United States, or in the absence  
4 of such a treaty where the distance between the United States and another nation is less  
5 than 400 nautical miles, a line equidistant between the United States and the other  
6 nation. Without affecting any Presidential Proclamation with regard to the  
7 establishment of the United States territorial sea or Exclusive Economic Zone, the inner  
8 boundary of that zone is-

9 “(A) a line coterminous with the seaward boundary of each of the several coastal  
10 States, as defined in 43 U.S.C. § 1312;

11 “(B) a line three marine leagues from the coastline of the Commonwealth of Puerto  
12 Rico;

13 “(C) a line three geographical miles from the coastlines of American Samoa, the  
14 United States Virgin Islands, and Guam;

15 “(D) for any possession of the United States not referred to in subparagraph (B) or  
16 (C), the coastline of such possession; and

17 “(E) for the Commonwealth of the Northern Mariana Islands,

18 “(i) its coastline, until such time as the Commonwealth of the Northern Mariana  
19 Islands is granted authority by the United States to regulate all fishing to a  
20 line seaward of its coastline, and

21 “(ii) upon the United States’ grant of such authority, the line established by such  
22 grant of authority.

1 “Nothing in this definition shall be construed as diminishing the authority of the Department of  
2 Defense, the Department of the Interior or any other Federal department or agency.”

3 (g) FOREIGN LAW OR REGULATION. – Section 3 (16 U.S.C. § 1802) is amended by-

4 (1) redesignating existing paragraphs (12) through (18) of Section 3 as paragraphs (15)  
5 through (21) respectively; and

6 (2) inserting after paragraph (21), as so redesignated, the following new paragraph-

7 “(22) The term “foreign law” means law, statute, regulation, decree or any other  
8 instrument or mechanism of foreign nations, as long as it has the force and effect of  
9 law, and regulates the taking, possession, importation, exportation, transportation, or  
10 sale of fish.”.

11 (h) HABITAT AREA OF PARTICULAR CONCERN. – Section 3 (16 U.S.C. §1802) is

12 amended by inserting after paragraph (22), as redesignated, the following new paragraph-

13 “(23) The term “habitat area of particular concern” means a specific area of water or  
14 substrate that forms a discrete subunit of essential fish habitat and that reflects, at a  
15 minimum-

16 “(A) the importance of the ecological function provided by the habitat;

17 “(B) the extent to which the habitat is sensitive to human-induced environmental  
18 degradation;

19 “(C) whether, and to what extent, development activities are, or will be, stressing the  
20 habitat areas; or

21 “(D) the rarity of the habitat area.”

22 (i) IMPORT. – Section 3 (16 U.S.C. §1802) is amended by-

1 (1) redesignating existing paragraphs (19) and (20) of Section 3 as paragraphs (24) and (25)  
2 respectively; and

3 (2) inserting after paragraph (25) the following new paragraph-

4 “(26) The term “import” means to land on, bring into, or introduce into, or attempt to land  
5 on, bring into, or introduce into, any place subject to the jurisdiction of the United States,  
6 whether or not such landing, bringing, or introduction constitutes an importation within  
7 the meaning of the customs laws of the United States.”.

8 (j) OBSERVER INFORMATION. – Section 3 (16 U.S.C. §1802) is amended by-

9 (1) redesignating existing paragraphs (21) through (27) of Section 3 as paragraphs (27)  
10 through (33) respectively; and

11 (2) inserting after paragraph (33), as so redesignated, the following new paragraph-

12 “(34) The term “observer information” means any information that is collected, observed,  
13 retrieved, or created by an observer pursuant to authorization from the Secretary.

14 Observer information includes, but is not limited to, fish harvest or processing  
15 observations; fish sampling or weighing data; vessel logbook data; vessel or processor-  
16 specific information, including any safety, location, or operating conditions observations;  
17 any personal information regarding participants in fishing or shore-side processing  
18 operations; and video, audio, photographic, or written documents.”.

19 (k) OPTIMUM. – Section 3 (16 U.S.C. §1802) is amended by-

20 (1) redesignating existing paragraph (28) of Section 3 as paragraph (35);

21 (2) striking paragraph (35), as so redesignated, and inserting the following paragraph-

1 “(35) The term “optimum”, with respect to the yield from a fishery, means the amount  
2 of fish that-

3 “(A) will provide the greatest overall benefit to the Nation, particularly with respect  
4 to food production and recreational opportunities, and taking into account the  
5 protection of marine ecosystems;

6 “(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as  
7 reduced by any relevant economic, social, or ecological factors or scientific  
8 uncertainty; and

9 “(C) in the case of a depleted stock of fish, provides for rebuilding to a level  
10 consistent with producing the maximum sustainable yield in such fishery.”.

11 (l) OVERFISHING. – Section 3 (16 U.S.C. §1802) is amended by-

12 (1) redesignating existing paragraph (29) of Section 3 as paragraph (36); and

13 (2) in paragraph (36), as so redesignated, striking "terms “overfishing” and “overfished”  
14 mean" and inserting "term “overfishing” means".

15 (m) UNITED STATES CITIZEN. – Section 3 (16 U.S.C. §1802) is amended by-

16 (1) redesignating existing paragraphs (30) through (40) of Section 3 as paragraphs (37)  
17 through (47) respectively; and

18 (2) inserting after paragraph (47) a new paragraph as follows-

19 “(48) The term “United States citizen” means an individual who is a citizen of the  
20 United States, or a corporation, partnership, association, or any other entity that meets  
21 the United States ownership requirements contained in Section 12102(c)(1) and (2) of  
22 title 46, United States Code.”; and

(3) redesignating existing paragraphs (41) through (45) of Section 3 as paragraphs (49) through (53), respectively.

**SEC. 4. FISHERIES ECOSYSTEMS.**

(a) FINDINGS. – Section 2(a) (16 U.S.C. §1801) is amended by-

- (1) inserting in paragraph (1) of Section 2(a), “and their associated ecosystems,” after “fishery resources”; and
- (2) inserting “protection and restoration” in paragraph (9) of Section 2(a) before “considerations”.

(b) PURPOSES. – Section 2(b) (16 U.S.C. §1801) is amended by-

- (1) inserting before the semicolon in paragraph (4) of Section 2(b), “and to promote the health and productivity of fishery ecosystems”; and
- (2) inserting in paragraph (7) of Section 2(b), “, especially habitats of particular concern,” after “essential fish habitat”.

(c) CONTENTS OF FISHERY MANAGEMENT PLANS. – Section 303(a) (16 U.S.C. § 1853) is amended by-

- (1) striking existing paragraph (5) of Section 303(a), and redesignating existing paragraphs (6) and (7) of Section 303(a) as paragraphs (5) and (6) respectively; and
- (2) striking paragraph (6), as so redesignated, and inserting the following paragraph in its place-  
“(6) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), identify other actions to encourage the conservation and enhancement of such habitat, and minimize to the



1 extent practicable, and in the following priority, adverse effects caused by fishing on-

2 “(A) any identified habitat areas of particular concern; and

3 “(B) other essential fish habitat;”.

4 (d) DISCRETIONARY PROVISIONS. – Section 303(b) (16 U.S.C. §1853) is amended by -

5 (1) striking existing paragraphs (7) and (8) of Section 303(b);

6 (2) redesignating existing paragraphs (9) through (12) of Section 303(b) as paragraphs (7)  
7 through (10), respectively;

8 (3) striking “and” at the end of paragraph (9) of Section 303(b), as so redesignated;

9 (4) striking the period at the end of paragraph (10) of Section 303(b), as so redesignated, and  
10 inserting a semicolon in its place; and

11 (5) inserting after paragraph (10), as so redesignated, the following new paragraphs-

12 “(11) incorporate conservation and management measures necessary to protect and enhance  
13 the health and productivity of fishery ecosystems;

14 “(12) identify habitat areas of particular concern as discrete subunits of essential fish  
15 habitat;”.

16 (e) PROPOSED REGULATIONS. – Section 303(c)(16 U.S.C. §1853) is amended by-

17 (1) striking “and” at the end of paragraph (1) of Section 303(c);

18 (2) striking the period after “304” in paragraph (2) of Section 303(c), and inserting “;  
19 and” in its place; and

20 (3) inserting a new paragraph after paragraph (2) of Section 303(c) as follows-

1 “(3) implementing conservation and management measures under a fishery ecosystem  
2 plan under Section 303(e)(3) may be submitted at any time after the Council adopts  
3 the fishery ecosystem plan.”.

4 (f) FISHERY ECOSYSTEMS. – Section 303 (16 U.S.C. §1853) is amended by inserting the  
5 following new subsection after subsection (d) of Section 303-

6 “(e) Fishery Ecosystems.

7 “(1) The Secretary shall, in consultation with the Councils, establish advisory  
8 guidelines (which shall not have the force and effect of law) for the Councils  
9 concerning ecosystem considerations in fishery conservation and management.

10 “(2) Each Council, or the Secretary as appropriate, may prepare a fishery ecosystem  
11 plan in order to assist in implementing an ecosystem approach to managing  
12 fisheries within its area of authority.

13 “(3) Fishery ecosystem plans may contain conservation and management measures  
14 applicable to fishery resources throughout the fishery ecosystem, including  
15 measures that the Council or the Secretary deems appropriate to—

16 “(A) avoid or minimize adverse effects of fishing on fish habitat;

17 “(B) establish marine managed areas in the Exclusive Economic Zone or the high  
18 seas; or

19 “(C) manage fishing capacity.

20 “(4) If a fishery ecosystem encompasses waters under the authority of more than one  
21 Council, or a Council or Councils and the Secretary, for fisheries under Section  
22 302(a)(3), the Councils, or the Council or Councils and the Secretary, as

appropriate, may collaborate to jointly prepare a fishery ecosystem plan for that ecosystem.”

(g) FISH HABITAT. – Section 305(b)(4)(A) (16 U.S.C. §1855) is amended by inserting the following before the period at the end of the subparagraph-

“, and in the following priority:

“(a) habitat areas of particular concern; and

“(b) other essential fish habitat”.

## **SEC. 5. REBUILDING FISHERIES.**

(a) FINDINGS. – Section 2(a) (16 U.S.C. §1801) is amended by-

(1) striking existing paragraph (6) of Section 2(a); and

(2) inserting the following paragraph in its place-

“(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild depleted stocks, to protect the ecosystems associated with those fishery resources, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation’s fishery resources.”.

(b) NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT. –

Section 301(a)(8) is amended by striking “overfished” and inserting “depleted” in its place.

(c) Section 303(a) (16 U.S.C. § 1853) is amended by-

(1) redesignating existing paragraphs (8) and (9) of Section 303(a) as paragraphs (7) and (8);

(2) striking existing paragraph (10) of Section 303(a); and

(3) inserting after paragraph (8), as so redesignated, the following new paragraph-

1 “(9) specify objective and measurable criteria for identifying when the fishery to which  
2 the plan applies is depleted or being subjected to overfishing (with an analysis of how the  
3 criteria were determined and the relationship of the criteria to the reproductive potential  
4 of stocks of fish in that fishery);”.

5 (d) Section 304(e) (16 U.S.C. §1854) is amended by striking “OVERFISHED” from the heading.

6 (e) Section 304(e) (16 U.S.C. §1854) is amended by-

7 (1) striking paragraphs (1), (2), (3), and (4) of Section 304(e); and

8 (2) inserting the following paragraphs-

9 “(1) The Secretary shall maintain and at least annually update a list of the status of  
10 fisheries within each Council’s geographical area of authority and identify those  
11 fisheries that are depleted, are approaching a condition of being depleted, or are  
12 being subjected to overfishing. For those fisheries managed under a fishery  
13 management plan or international agreement, the stock status shall be determined  
14 using the criteria for overfishing and depletion specified in such plan or  
15 agreement. A fishery shall be classified as approaching a condition of being  
16 depleted if, based on trends in fishing effort, fishery resource size, and other  
17 appropriate factors, the Secretary estimates that the fishery will become depleted  
18 within two years.

19 “(2) If the Secretary determines at any time that a fishery is depleted or being  
20 subjected to overfishing, the Secretary shall immediately notify the appropriate  
21 Council. The Secretary shall publish each notice under this paragraph in the  
22 *Federal Register*.

1 “(3) Within one year of an identification under paragraph (1) that a fishery is depleted  
2 or approaching a condition of being depleted, or being subjected to overfishing,  
3 or notification under paragraphs (2) or (7), the appropriate Council, or the  
4 Secretary, for fisheries under Section 302(a)(3), shall prepare a fishery  
5 management plan, plan amendment, or proposed regulations for the fishery to  
6 which the identification or notice applies-

7 “(A) to end overfishing if the fishery was being subjected to overfishing;

8 “(B) to rebuild the depleted fishery if the fishery was identified as depleted;

9 or

10 “(C) to prevent overfishing from occurring if the fishery was identified as  
11 approaching a depleted condition.

12 “(4) Any fishery management plan, amendment, or proposed regulations prepared  
13 pursuant to paragraph (3) or paragraph (5) for such fishery shall-

14 “(A) specify a time period for ending overfishing that shall be as short as possible, not  
15 to exceed two years unless otherwise provided for under an international  
16 agreement in which the United States participates, taking into account the status  
17 and biology of any depleted stocks of fish, the needs of fishing communities,  
18 recommendations by international organizations in which the United States  
19 participates, and the interaction of the depleted stock of fish within the marine  
20 ecosystem;

21 “(B) specify a time frame for rebuilding depleted fisheries to a level that can sustain  
22 maximum sustainable yield, not to exceed the expected time to rebuild absent

1 any fishing mortality under prevailing ecological and environmental conditions,  
2 plus the generation time of the stock of fish;

3 “(C) allocate both overfishing restrictions and recovery benefits fairly and equitably  
4 among sectors of the fishery; and

5 “(D) for fisheries managed under an international agreement, reflect traditional  
6 participation in the fishery, relative to other nations, by fishermen of the United  
7 States.”.

8 (f) Section 304(e)(5) (16 U.S.C. §1854) is amended by-

9 (1) striking “overfished”, and inserting “depleted” in its place;

10 (2) striking “to stop overfishing and rebuild affected stocks of fish within 9 months under  
11 subsection (c)”; and

12 (3) inserting “pursuant to paragraph (4) and subsection (c) within 9 months” in its place.

13 (g) Section 304(e)(7) (16 U.S.C. §1854) is amended by striking “and rebuilding affected” and  
14 inserting “or rebuilding depleted”.

15 **SEC. 6. SCIENCE SUPPORT FOR FISHERIES CONSERVATION AND**  
16 **MANAGEMENT.**

17 (a) FINDINGS. – Section 2(a)(8) (16 U.S.C. §1801) is amended by inserting “and associated  
18 ecosystems” after “fishery resources”.

19 (b) PERTINENT DATA. – Section 201(g) (16 U.S.C. §1821) is amended by-

20 (1) striking “, as described in section 303(a)(5)” in paragraph (3);

21 (2) striking “303(b)(2), (3), (4), (5), and (7)” in paragraph (4); and

22 (3) inserting “303(b)(2), (3), (4), and (5)” in its place.

1 (c) COMMITTEES AND PANELS. – Section 302(g)(1) (16 U.S.C. §1852) is amended by  
2 inserting the following new subparagraphs after paragraph (1)-

3 “(A) The Secretary and each Council shall formalize a peer review process for scientific  
4 information used to advise the Council or the Secretary, as appropriate, about the  
5 conservation and management of the fishery.

6 “(B) Subject to the provisions of 302(f)(7), the Council may pay a stipend to members of  
7 the scientific and statistical committee that are not employed by the federal  
8 government or a state marine fisheries agency.”.

9 (d) CONTENTS OF FISHERY MANAGEMENT PLANS. – Section 303(a) (16 U.S.C. § 1853)  
10 is amended by-

11 (1) striking existing paragraph (11);

12 (2) inserting after new paragraph (9) the following new paragraph-

13 “(10) to the extent practicable, implement the standardized bycatch reporting methodology  
14 established pursuant to Section 402(a)(1)(B) and include conservation and  
15 management measures that, in the following priority–

16 “(A) minimize bycatch; and

17 “(B) minimize the mortality of bycatch that cannot be avoided;” and

18 (3) redesignating existing paragraphs (12) through (14) of Section 303(a) as paragraphs (11)  
19 through (13), respectively.

20 (e) DISCRETIONARY PROVISIONS. – Section 303(b) (16 U.S.C. §1853) is amended by  
21 inserting a new paragraph at the end of Section 303(b) as follows-

22 “(13) consistent with the national data collection system contained in Section 402,

1 “(A) specify the pertinent data that shall be submitted to the Secretary with respect  
2 to commercial, recreational, and charter fishing in the fishery, including, but  
3 not limited to, information regarding the type and quantity of fishing gear  
4 used, catch by species in numbers of fish or weight thereof, areas in which  
5 fishing was engaged in, time of fishing, number of hauls, harvest and  
6 processing revenues (by species), production costs, capital expenditures, and  
7 other fishing or processing expenses and the estimated processing capacity of,  
8 and the actual processing capacity utilized by, United States fish processors;

9 “(B) require fish processors who first receive fish that are subject to the plan to  
10 submit data that are necessary for the conservation and management of the  
11 fishery; and

12 “(C) require, as may be appropriate, that one or more observers be carried on board  
13 a vessel of the United States engaged in fishing for species that are subject to  
14 a fishery management plan, for the purposes of collecting data necessary for  
15 the conservation and management of the fishery, and recommend a funding  
16 mechanism under Section 403(d)(1)(A); except that such a vessel shall not be  
17 required to carry an observer on board if the facilities of the vessel for the  
18 quartering of an observer, or for carrying out observer functions, are so  
19 inadequate or unsafe that the health or safety of the observer or the safe  
20 operation of the vessel would be jeopardized; and”.

21 (f) DATA COLLECTION. – Section 313(j) (16 U.S.C. §1862) is amended by deleting paragraph  
22 (8) and redesignating existing paragraph (9) as paragraph (8).



1 (g) INFORMATION COLLECTION. – Section 402 (16 U.S.C. §1881) is amended by striking  
2 subsection (a) and inserting the following subsection-

3 “(a) COLLECTION PROGRAMS.

4 “(1) The Secretary shall establish and implement a national data collection system to-

5 “(A) assess and specify the nature and extent of scientific data, including observer  
6 data, needed for effective implementation of fishery management plans and  
7 fishery ecosystem plans; and

8 “(B) establish a standardized reporting methodology to assess the amount and type of  
9 bycatch.

10 “(2) SECRETARIAL INITIATION. If the Secretary determines that additional

11 information is necessary to develop, implement, revise, or monitor a fishery  
12 management plan, or to determine whether a fishery is in need of management, the  
13 Secretary may, by regulation, implement an information collection or observer  
14 program requiring submission of such additional information for the fishery.

15 “(3) If a Council determines that additional information would be beneficial for

16 developing, implementing, or revising a fishery management plan or fishery  
17 ecosystem plan or for determining whether a fishery is in need of management, the  
18 Council may request that the Secretary implement an information collection program  
19 for the fishery which would provide the types of information specified by the  
20 Council.

21 “(4) The Secretary is authorized to collect from a person applying for or otherwise  
22 obtaining a permit, quota, allocation, or other privilege issued under this Act-

1 “(A) the person’s date of birth and social security number or, if no social security  
2 number is available for this purpose, the person’s taxpayer identification number; or

3 “(B) for a person other than an individual-

4 “(i) the taxpayer identification number for a corporation, partnership, association,  
5 or other entity; or

6 “(ii) if such corporation, partnership, association, or other entity does not have a  
7 taxpayer identification number, the social security number of an individual  
8 who is a corporate officer, general partner, or other authorized officer or  
9 representative who signed the application for the permit or otherwise  
10 obtained the permit, quota, allocation, or privilege.

11 “(5) The Secretary may use the information collected under subsection (a)(4) to manage  
12 and conserve fisheries, enforce Federal fishery statutes and all regulations and  
13 permits issued pursuant to those statutes and improve and maintain the quality of  
14 data submitted through permits issued under this Act. The Secretary may disclose  
15 the information collected under subsection (a)(4) in accordance with Section  
16 402(b).”.

17 (h) Section 402(b)(1) (16 U.S.C. §1881a) is amended by striking existing paragraph (1) of  
18 Section 402(b), and inserting the following paragraph-

19 “(1) Any information submitted to the Secretary by any person in compliance with any  
20 requirements under this Act and that contains confidential information shall be  
21 confidential and shall be exempt from disclosure under the Freedom of Information  
22 Act pursuant to 5 U.S.C. §552(b)(3), except-

1 “(A) to Federal employees and Council employees who are responsible for fishery  
2 management plan development, monitoring, or enforcement;

3 “(B) to State or Marine Fisheries Commission employees, but only to the extent that  
4 the Secretary has determined that disclosure is necessary to further the  
5 Department’s mission to conserve and manage fisheries and subject to a  
6 confidentiality agreement that prohibits public disclosure of information of any  
7 person;

8 “(C) to State employees who are responsible for fishery management plan  
9 enforcement, if the States employing those employees have entered into a  
10 fishery enforcement agreement with the Secretary and the agreement is in  
11 effect;

12 “(D) when such information is used by State, Council, or Marine Fisheries  
13 Commission employees to verify catch under a limited access program, but  
14 only to the extent that it is consistent with (b)(1)(B);

15 “(E) when the Secretary has obtained written authorization from the person  
16 submitting such information to release such information to persons for reasons  
17 not otherwise provided for in this subsection, and such release does not violate  
18 other requirements of this Act;

19 “(F) when such information is required to be submitted to the Secretary for any  
20 determination under a limited access program; or

21 “(G) in support of homeland and national security activities, including the Coast  
22 Guard’s homeland security missions as defined in 6 U.S.C. §468(a)(2).”.

1 (i) Section 402(b)(2) (16 U.S.C. §1881a) is amended by-

2 (1) redesignating existing paragraph (2) of Section 402(b) as paragraph (3); and

3 (2) inserting a new paragraph (2) as follows-

4 “(2) Any observer information shall be confidential and shall not be disclosed, except as  
5 described in (b)(1)(A)-(G) or-

6 “(A) as authorized by a fishery management plan or regulations under the authority  
7 of the North Pacific Council to allow disclosure to the public of weekly  
8 summary bycatch information identified by vessel or for haul-specific bycatch  
9 information without vessel identification;

10 “(B) when such information is necessary in proceedings to adjudicate observer  
11 certifications; or

12 “(C) as authorized by any regulations issued under subsection (b)(3) allowing the  
13 collection of observer information, pursuant to a confidentiality agreement  
14 between the observers, observer employers, and the Secretary prohibiting  
15 disclosure of the information by the observers or observer employers, in order  
16 to-

17 “(i) allow the sharing of observer information among observers and between  
18 observers and observer employers as necessary to train and prepare  
19 observers for deployments on specific vessels; or

20 “(ii) validate the accuracy of the observer information collected.”.

21 (j) Section 402(b)(3) (16 U.S.C. §1881a), as so redesignated, is amended by striking “(1)(E)”  
22 and inserting “(2)(A)” in its place.

(k) Section 404(c)(4) (16 U.S.C. §1881c) is amended by striking “under section 401”.

**SEC. 7. APPOINTMENTS OF REGIONAL FISHERY COUNCIL MEMBERS.**

(a) VOTING MEMBERS. – Section 302(b)(2)(A) (16 U.S.C §1852) is amended by inserting “or the ecosystems that support those fisheries, and have demonstrated a commitment to sustainable fisheries in the Council’s area of authority” after “geographical area concerned”.

(b) Section 302(b)(2)(B) (16 U.S.C. §1852) is amended by-

(1) inserting “and representation of other individuals who are concerned with the conservation and management of the fishery resources and marine ecosystems in which fisheries are conducted. In making appointments of nominees among states, the Secretary shall consider the relative value and importance of commercial and recreational fisheries in each of the states” before the period at the end of the first sentence; and

(2) striking “Merchant Marine and Fisheries” and inserting “Resources” in its place.

(c) Section 302(b)(2)(C) (16 U.S.C. §1852) is amended by-

(1) inserting “Prior to selecting individuals for the list, the Governor shall publish a solicitation notice for nominees for the Council by any means that will result in wide publicity.” after “applicable constituent State.”;

(2) striking “A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals.”;

(3) inserting “, and shall include a sufficient number of individuals to represent the breadth

1 and diversity of marine fisheries and their ecosystems within the state” after “the  
2 requirements of subparagraph (A)”;

3 (4) striking “If the Secretary determines that any individual is not qualified, the Secretary  
4 shall notify the appropriate Governor of that determination.”; and

5 (5) inserting in its place, “If the Secretary determines that any individual is not qualified, or  
6 that the individuals on the list do not sufficiently represent the breadth and diversity of  
7 marine fisheries and their ecosystems within the state, the Secretary may notify the  
8 appropriate Governor of that determination.”.

## 9 **SEC. 8. COUNCIL COORDINATION COMMITTEE.**

10 (a) PROCEDURAL MATTERS. – Section 302(i)(1) (16 U.S.C. §1852) is amended by-

11 (1) striking “Councils or to the” after “shall not apply to the”; and

12 (2) inserting at the end of the paragraph before the period, “, the Councils, the Council  
13 coordination committee, or to meetings that include Federal employees, committee  
14 members, and/or Council staff”.

15 (b) COUNCIL COORDINATION COMMITTEE. – Section 302(i) (16 U.S.C. §1852) is  
16 amended by inserting a new paragraph after paragraph (6) as follows-

17 “(7) Council Coordination Committee. The Councils may establish a Council coordination  
18 committee consisting of the Chairs, Vice Chairs, and Executive Directors of each of the  
19 Regional Fishery Management Councils identified in subsection (a)(1), or other Council  
20 members of staff, in order to periodically discuss issues and provide advice on matters  
21 relevant to all Councils including issues related to the implementation of this Act.”

## 22 **SEC. 9. MONITORING OF PACIFIC INSULAR AREA FISHERIES.**

1 (a) WAIVER AUTHORITY. – Section 201(h)(2)(B) (16 U.S.C. §1821) is amended by striking  
2 "that is at least equal in effectiveness to the program established by the Secretary", and  
3 inserting in its place "or other monitoring program that the Secretary determines is adequate  
4 to monitor harvest, bycatch, and compliance with the laws of the United States by vessels  
5 fishing under the agreement".

6 (b) MARINE CONSERVATION PLANS. – Section 204(e)(4)(A)(i) (16 U.S.C. §1824) is  
7 amended to read as follows-

8 "(i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary  
9 determines are adequate to monitor the harvest, bycatch, and compliance with the laws of  
10 the United States by foreign fishing vessels that fish under Pacific Insular Area fishing  
11 agreements;"

## 12 **SEC. 10. CARIBBEAN COUNCIL JURISDICTION.**

13 Section 302(a)(1)(D) (16 U.S.C. §1852) is amended by inserting "and of possessions of the  
14 United States in the Caribbean Sea" after "seaward of such States".

## 15 **SEC. 11. NOTICE OF COUNCIL MEETINGS.**

16 (a) REGULAR AND EMERGENCY MEETINGS. –Section 302(i)(2)(C) (16 U.S.C. § 1852) is  
17 amended by-

18 (1) striking the first sentence of subparagraph (C); and

19 (2) inserting in its place as follows-

20 "(C) Timely public notice of each regular meeting and each emergency meeting,

21 including the time, place, and agenda of the meeting, shall be provided by any

22 means that will result in wide publicity in the major fishing ports of the region (and

1 in other major fishing ports having a direct interest in the affected fishery).”  
2 (b) CLOSED MEETINGS. – Section 302(i)(3)(B) (16 U.S.C. §1852) is amended by striking  
3 "notify local newspapers" and inserting "provide notice by any means that will result in wide  
4 publicity" in its place.

5 **SEC. 12. DEDICATED ACCESS PRIVILEGES.**

6 (a) Section 303(b)(6) (16 U.S.C. §1853) is amended by-

7 (1) inserting “. (A) In” after “optimum yield”;

8 (2) striking “if, in” before “developing such system”;

9 (3) inserting “shall” before “take into account”;

10 (4) redesignating existing subparagraphs (A) through (F) of Section 303(b)(6) as (i) through  
11 (vi), respectively;

12 (5) striking the semicolon after “considerations” and inserting a period in its place; and

13 (6) inserting a new subparagraph after subparagraph (A) as follows-

14 “(B) Consistent with the requirements of Sections 303(d) and 305(i) of this Act, limited  
15 access systems may feature dedicated access privileges for fishing such as-

16 “(i) individual fishing quotas;

17 “(ii) community quotas for communities eligible to participate in a community quota  
18 system as described in Section 305(i) of this Act;

19 “(iii) privileges for fishing cooperatives established pursuant to the Fishermen’s

20 Collective Marketing Act of 1934 (15 U.S.C. §521); and

21 “(iv) area-based quotas.”

22 (b) DEDICATED ACCESS PRIVILEGES. – Section 303 (16 U.S.C. §1853) is amended-



1 (1) by striking the text of subsection (d); and

2 (2) inserting the following in its place-

3 “(d) DEDICATED ACCESS PRIVILEGES.

4 “(1) IN GENERAL. – In addition to complying with the requirements of

5 Section 301(a) of this Act and subsections (a)(7) and (b)(6) of this section, any  
6 dedicated access privilege program submitted and approved after the effective  
7 date of this Act shall-

8 “(A) provide for administration of the program by the Secretary in accordance  
9 with the terms of the plan;

10 “(B) if established in a fishery that contains depleted stocks or subject to a  
11 rebuilding plan, assist in its rebuilding; and, if established in a fishery that  
12 is determined by the Secretary or the Council to have excess capacity,  
13 contribute to reducing capacity; and

14 “(C) contribute to improved economic performance in the fishery.

15 “(2) ALLOCATIONS AND TRANSFERS. – Any dedicated access privilege program  
16 shall-

17 “(A) establish fair and reasonable procedures for initial allocation of privileges  
18 upon establishment of the program, including consideration of-

19 “(i) historical harvests;

20 “(ii) employment in the harvesting and processing sectors; and

21 “(iii) investments in the fishery;

1 “(B) to the extent practicable, consider the basic cultural and social framework of  
2 the fishery, especially the roles of small owner-operator fishermen and the  
3 sustained participation of fishing communities that depend on these fisheries;  
4 “(C) include measures to assist, when necessary and appropriate, entry-level and  
5 small-scale fishermen, captains, and crew, including providing privileges and  
6 where appropriate, recommending the provision of economic assistance in  
7 the purchase of privileges;  
8 “(D) ensure that individual privilege holders do not acquire an excessive share of  
9 the total privileges in the program;  
10 “(E) prohibit any person other than a United States citizen or a permanent resident  
11 alien from acquiring dedicated access privileges;  
12 “(F) authorize individual privileges to be held by or issued to fishing vessel  
13 owners, fishermen, crew members, communities eligible under Section  
14 305(i) of this Act, fishing cooperatives established pursuant to the  
15 Fishermen’s Collective Marketing Act of 1934 (15 U.S.C. §521), and other  
16 persons or entities;  
17 “(G) recover the costs of management, science, data collection and analysis,  
18 observer coverage, and enforcement activities that are directly related to and  
19 in support of the program in accordance with Section 304(d)(2), as  
20 determined by the Secretary;

1 “(H) establish a policy on the transferability of privileges (through sale or lease),  
2 with the minimal conditions necessary to ensure that provisions of this  
3 section are upheld; and

4 “(I) establish a program to track privileges, including transfers through sales and  
5 leases in secondary markets.

6 “(3) A dedicated access privilege program, or any permit that authorizes fishing, shall  
7 not create, or be construed to create, any right, title, or interest in or to any fish  
8 before the fish is harvested, and may be revoked or limited at any time without  
9 compensation, if necessary for the conservation and management of the fishery.

10 “(4) For purposes of this subsection, any reference to a Council includes the Secretary  
11 with respect to actions taken under Section 304(c) or (g).”

12 (c) ESTABLISHMENT OF FEES. – Section 304(d)(1) (16 U.S.C. §1854) is amended by-

13 (1) inserting “Permit fees.” after “(1)”;

14 (2) in paragraph (1), inserting “or 401” after “303(b)(1)”;

15 (3) striking the last sentence.

16 (d) Section 304(d)(2) (16 U.S.C. §1854) is amended by striking paragraph (2) of Section 304(d),  
17 and inserting the following paragraphs-

18 “(2) Revenue for dedicated access privilege programs. For dedicated access privilege  
19 programs established after the effective date of this Act, the Secretary shall, fulfill  
20 the cost recovery requirement of Section 303(d)(2)(G) by reserving and  
21 auctioning a share of privileges in accordance with a protocol established by the  
22 Secretary. The amount of privileges to be auctioned shall be determined by the

1 Secretary in an amount that will result in revenue equal to no less than 2 percent  
2 and no more than 15 percent of the ex-vessel value of the fish caught with the  
3 program privileges, unless the Secretary determines that temporary financial  
4 conditions in the fishery warrant an exemption from cost recovery in a given year.

5 “(3) Revenue for other programs. The Secretary shall collect revenue to recover costs  
6 directly related to the management, science, data collection and analysis, observer  
7 coverage, and enforcement activities of any program not included in paragraph (2),  
8 as determined by the Secretary. The amount of revenue collected shall be  
9 determined by the Secretary in an amount that will result in revenue equal to no less  
10 than 2 percent and no more than 15 percent of the ex-vessel value of the fish caught,  
11 unless the Secretary determines that temporary financial conditions in the fishery  
12 warrant an exemption from cost recovery in a given year.

13 “(4)(A) Revenue collected under this subsection shall be in addition to any other collections  
14 under this Act and except to the extent deposited in the Fishery Observer Fund  
15 pursuant to Section 403(e), shall be deposited in the Limited Access System  
16 Administration Fund established under Section 305(h)(5)(B).

17 “(B) Upon application by a State, the Secretary shall transfer to such State up to 33  
18 percent of any fee collected pursuant to paragraph (2)(D) under a community  
19 quota program and deposited in the Limited Access System Administration Fund  
20 in order to reimburse such State for actual costs directly incurred in the  
21 management and enforcement of such program.”.

22 (e) COMMUNITY QUOTA. – Section 305(i) (16 U.S.C. §1855) is amended by-

1 (1) striking “ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT  
2 PROGRAMS” in the heading of Section 305(i) and inserting in its place,

3 “COMMUNITY QUOTA PROGRAMS”; and

4 (2) inserting a new subparagraph after subparagraph (D) of Section 305(i)(1) as follows-

5 “(E) In addition to communities eligible pursuant to subparagraph (B), a community shall  
6 be eligible to participate in the western Alaska community development quota  
7 program under subparagraph (A) if the community was–

8 “(i) listed in table 7 to part 670 of title 50, Code of Federal Regulations, as in effect  
9 on the date of enactment of this Act; or

10 “(ii) approved by the National Marine Fisheries Service on April 19, 1999.”

11 (f) OTHER COMMUNITY SUSTAINABILITY PROGRAMS. – Section 305(i) (16 U.S.C.  
12 § 1855) is amended by-

13 (1) redesignating existing paragraphs (3) and (4) of Section 305(i) as paragraphs (4) and (5)  
14 respectively; and

15 (2) inserting after paragraph (2) of Section 305(i) a new paragraph as follows-

16 “(3) Other community sustainability programs.

17 “(A) Subject to Section 303(d), any Council may recommend and the Secretary may  
18 approve, a community sustainability program for any fishery under the  
19 authority of such Council, other than those described in subparagraphs (1) and  
20 (2) above, in order to provide dedicated access privileges to such fishery for  
21 communities that participate in the program.

1 “(B) To be eligible to participate in a community sustainability program, a  
2 community shall-

3 “(i) be located within the management area of the relevant Council;

4 “(ii) meet criteria developed by the relevant Council, approved by the  
5 Secretary, and published in the *Federal Register*;

6 “(iii) consist of residents who conduct commercial or subsistence fishing  
7 within the Council’s management area;

8 “(iv) develop and submit a Community Sustainability Plan to the Council and  
9 the Secretary.

10 “(C) In developing the criteria for eligible communities under subparagraph (B)(ii),  
11 the Council shall base such criteria on traditional fishing practices in or  
12 dependence on the fishery, the cultural and social framework relevant to the  
13 fishery, and economic barriers to access to the fishery.”

14 (g) GULF OF MEXICO RED SNAPPER RESEARCH. – Section 407(b) (16 U.S.C. §1883) is  
15 amended by-

16 (1) striking “In addition to the restrictions under section 303(d)(1)(A), the”; and

17 (2) inserting “The” in its place.

18 **SEC. 13. ACTION BY THE SECRETARY.**

19 (a) REQUIRED PROVISIONS. – Paragraph (1) of Section 303(a) (16 U.S.C. §1853) is amended  
20 by-

21 (1) striking “overfished” in subparagraph (A) and inserting “depleted” in its place;

22 (2) striking the “and” at the end of subparagraph (B) of Section 303(a)(1);

1 (3) at the end of subparagraph (C) of Section 303(a)(1), inserting “and”; and

2 (4) inserting a new subparagraph after subparagraph (C) as follows:

3 “(D) cost-effective considering the administrative cost of implementation and operation  
4 of the measure;”

5 (b) DISCRETIONARY PROVISIONS. – Section 303(b) (16 U.S.C. §1853) is amended by

6 inserting a new paragraph as follows: “(14) establish alternative procedural mechanisms in  
7 lieu of plan amendments for implementing conservation and management measures.”

8 (c) REVIEW OF PLANS AND INITIAL REGULATIONS. – Section 304(a) (16 U.S.C. § 1854)

9 is amended by striking existing Section 304(a) and inserting in its place-

10 “(a) REVIEW OF PLANS.

11 “(1) Preliminary Evaluation. –

12 “(A) Upon transmittal by the Council to the Secretary of a fishery management plan  
13 or plan amendment and any proposed implementing regulations prepared  
14 under Section 303(c)(1), the Secretary shall make a preliminary evaluation of  
15 the management plan or amendment as to whether it is sufficient in scope and  
16 substance to warrant review under this subsection and consistent with the  
17 national standards, the other provisions of this Act, and other applicable laws.

18 “(B) If the preliminary evaluation is negative, the Secretary shall disapprove the  
19 plan or amendment and notify the Council, in writing, of the reasons for the  
20 disapproval.

21 “(2) Notice of Proposed Plans, Amendments, and Rules. – By the 15<sup>th</sup> day following an  
22 affirmative preliminary evaluation under (1)(A), the Secretary shall publish in the

1 *Federal Register-*

2 “(A) a notice stating that the plan or amendment is available and that written data,  
3 views, or comments of interested persons on the plan or amendment may be  
4 submitted to the Secretary during the 50-day period beginning on the date the  
5 notice is published; and

6 “(B) any proposed implementing regulations that the Secretary preliminarily  
7 determines to be consistent with the fishery management plan or amendment,  
8 this Act, and any other applicable law, subject to the Secretary’s authority to  
9 include such changes to the Council’s proposed regulations as the Secretary  
10 believes necessary, together with an explanation of those changes for a 50-day  
11 comment period.

12 “(3) Secretarial Decision on Plan or Amendment. – The Secretary shall approve,  
13 disapprove, or partially approve a plan or amendment within 30 days of the end of  
14 the comment period under paragraph (2) by written notice to the Council.

15 “(A) In making this determination, the Secretary shall-

16 “(i) take into account the information, views, and comments received from  
17 interested persons;

18 “(ii) consult with the Secretary of State with respect to foreign fishing; and

19 “(iii) consult with the Secretary of the department in which the Coast Guard is  
20 operating with respect to enforcement at sea and to fishery access  
21 adjustments referred to in Section 303(a)(5).

22 “(B) A notice of disapproval or partial approval shall specify-



1 “(i) the applicable law with which the plan or amendment is inconsistent;

2 “(ii) the nature of such inconsistencies; and

3 “(iii) recommendations concerning the actions that could be taken by the

4 Council to conform such plan or amendment to the requirements of

5 applicable law.

6 “(4) Disapproval or partial approval. – If the Secretary disapproves or partially approves

7 a plan or amendment, the Council may submit a revised plan or amendment to the

8 Secretary for review under this subsection.

9 “(5) Accompanying Regulations. – If the Secretary published proposed implementing

10 regulations pursuant to subsection (a)(2)(B), the Secretary shall either-

11 “(A) publish final regulations within 45 days after the end of the comment period

12 under subsection (a)(2)(B); or

13 “(B) notify the Council in writing of inconsistencies with the plan, the

14 amendment, this Act, or other applicable law and provide recommendations

15 on revisions to cure the inconsistencies. Upon receiving such a notification

16 from the Secretary, the Council may revise the regulations and resubmit

17 them to the Secretary for reevaluation under subsection (b).

18 “(6) Fishery management plans, fishery management plan amendments, or fishery

19 ecosystem plans are not rules subject to 5 U.S.C. §553, and need not be codified in

20 the Code of Federal Regulations in accordance with the Federal Register Act (44

21 U.S.C. §1501).”

1 (d) REVIEW OF OTHER REGULATIONS. – Section 304(b) (16 U.S.C. § 1854) is amended by  
2 striking paragraph (1) of Section 304(b), and inserting the following paragraph-

3 "(1) Upon transmittal by the Council to the Secretary of regulations proposed under  
4 Section 303(c)(2) or (3), the Secretary shall initiate an evaluation of the proposed  
5 regulations to determine whether they are consistent with the fishery management  
6 plan, this Act, and other applicable law.

7 "(A) If the Secretary determines that the regulations are consistent, the Secretary  
8 shall, within 15 days of transmittal by the Council, publish such regulations in  
9 the *Federal Register*, with such changes as may be necessary and an  
10 explanation of those changes, for a public comment period of 15 to 60 days.

11 "(B) If the Secretary determines that the regulations are not consistent, the Secretary  
12 shall, within 15 days of transmittal by the Council, notify the Council in  
13 writing of the inconsistencies and provide recommendations on revisions that  
14 would make the proposed regulations consistent with the fishery management  
15 plan, this Act, and other applicable law."

16 (e) ALTERNATIVE PROCEDURAL MECHANISMS. – Section 304 (16 U.S.C. §1854) is  
17 amended by inserting a new subsection (i) as follows-

18 "(i) ALTERNATIVE PROCEDURAL MECHANISMS.

19 "(1) In a fishery management plan or amendment, the Council or Secretary, as  
20 appropriate, may develop alternative procedural mechanisms to be used in lieu of  
21 plan amendments for implementing conservation and management measures.

1 “(A) Such mechanisms may allow for abbreviated processes for the implementation  
2 of regulations or other actions as appropriate.

3 “(B) Alternative procedural mechanisms shall only be approved or adopted for use  
4 in situations where:

5 “(i) the conservation and management measure is within the scope of  
6 conservation and management measures established in an existing plan;

7 “(ii) otherwise applicable regulatory processes are not sufficient to allow  
8 timely and efficient implementation of conservation and management measures  
9 in response to new information; and

10 “(iii) notice of the conservation and management measure is provided  
11 appropriate to the significance of the expected impacts on affected fishery  
12 resources and on the participants in the fishery.

13 “(C) Any final agency action taken pursuant to the alternative procedural  
14 mechanism must be promptly published in the *Federal Register*.

15 “(2) If the alternative procedural mechanism is approved by the Secretary pursuant to  
16 304(a), or adopted by the Secretary pursuant to Section 304(c) or (g) and  
17 implemented through regulations, any regulation issued or other action taken  
18 pursuant to the alternative procedural mechanism need not comply with the  
19 rulemaking provisions of Section 304(b), (c) or (g), or Section 553(b)-(d) of title 5,  
20 United States Code.”

21 (f) EMERGENCY REGULATIONS. Section 305(c)(3) (16 U.S.C. §1855) is amended by-

22 (1) striking "180 days" the second time it appears in section 305(c)(3)(B) and inserting "186

1 days";

2 (2) inserting "Section 553(b)-(d) of title 5, United States Code shall not apply to emergency  
3 regulations issued pursuant to this provision." after "the period in which such regulation  
4 is in effect."; and

5 (3) inserting "or interim measures" after "emergency regulations" in paragraph (D).

6 (g) RESPONSIBILITY OF THE SECRETARY. – Section 305(d) (16 U.S.C. §1855) is amended  
7 by-

8 (1) striking subsection (d); and

9 (2) inserting the following in its place-

10 “(d) RESPONSIBILITY OF THE SECRETARY.

11 “(1) The Secretary shall have general responsibility to carry out any fishery  
12 management plan or amendment approved or prepared by him, in accordance  
13 with the provisions of this Act.

14 “(2) In addition to the other rulemaking provisions of this Act, the Secretary shall  
15 promulgate such regulations, in accordance with section 553 of title 5, United  
16 States Code, as may be necessary to discharge such responsibilities or to carry  
17 out any other provision of this Act.

18 “(3) The Secretary is authorized to issue guidance to interpret and facilitate  
19 implementation of this Act.”

20 **SEC. 14. JUDICIAL REVIEW OF CERTAIN ACTIONS BY THE SECRETARY.**

21 (a) Section 305(f) (16 U.S.C. § 1855) is amended by-

22 (1) in paragraph (1)-

1 (A) striking “Regulations promulgated” and inserting “Regulations or other final agency  
2 actions taken” in its place;

3 (B) striking “and actions described in paragraph (2)”;

4 (C) inserting "or otherwise becomes final agency action" after "published in the *Federal*  
5 *Register*";

6 (2) striking existing paragraph (2) of Section 305(f);

7 (3) redesignating existing paragraphs (3) and (4) of Section 305(f) as paragraphs (2) and (3)  
8 respectively;

9 (4) inserting in paragraph (2), as so redesignated, “or actions” after “regulations”; and

10 (5) inserting the following new paragraph after paragraph (3), as so redesignated-

11 “(4) The court, in its discretion, may allow the prevailing party a reasonable attorney’s  
12 fee, including litigation expenses, and costs.”

13 **SEC. 15. EFFICIENT, EFFECTIVE ENVIRONMENTAL IMPACT ASSESSMENT.**

14 Section 304 (16 U.S.C. §1854) is amended by inserting the following new section after  
15 subsection (i)-

16 “(j) EFFICIENT, EFFECTIVE ENVIRONMENTAL IMPACT ASSESSMENT.

17 “(1) The Secretary shall, in consultation with the Councils and the Council on  
18 Environmental Quality, revise and update agency procedures for the assessment of  
19 impacts of proposed fishery management actions pursuant to any applicable  
20 provisions of the National Environmental Policy Act (42 U.S.C. §4231 et seq.) and  
21 applicable law regarding the environmental effects abroad of major federal actions.  
22 Such procedures shall integrate any applicable environmental analysis process,

1 including the time frames for public input, with the process for the preparation and  
2 dissemination of fishery management plans, plan amendments, and other actions  
3 taken or approved pursuant to this Act in order to provide for timely, clear and  
4 concise analysis that is useful to decisionmakers and the public, reduce extraneous  
5 paperwork, and effectively involve the public.

6 “(2) The Secretary shall propose revised procedures within twelve months of the date of  
7 enactment of this Act, shall provide 90 days for public review and comment, and  
8 shall promulgate final procedures no later than 24 months from the date of enactment  
9 of this Act.

10 “(3) The Secretary is authorized and directed to, in cooperation with the Council on  
11 Environmental Quality, involve the affected public in the development of revised  
12 procedures (using workshops or other appropriate means of public involvement).”

13 **SEC. 16. ENFORCEMENT IMPROVEMENTS.**

14 (a) DEPICTION OF SEAWARD BOUNDARY OF STATES. – Section 306 (16 U.S.C. §1856)  
15 is amended by adding the following new subsection –

16 “(d) DEPICTION OF SEAWARD BOUNDARY OF STATES.—“For purposes of this Act,  
17 the seaward boundary of each coastal State as defined in 43 U.S.C. §1312, the  
18 Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, and  
19 Guam is the ambulatory line lying 3 nautical miles (or, in the case of certain States, 3 marine  
20 leagues) seaward of the baseline from which the breadth of the territorial sea is measured, as  
21 depicted on official United States nautical charts published by NOAA. For purposes of  
22 fisheries enforcement pursuant to this Act, the edition of the NOAA chart in effect at the time

1 of an alleged violation shall conclusively establish the location of the seaward boundary of  
2 the relevant State.”

3 (b) PROHIBITED ACTS. – Section 307(1) (16 U.S.C. §1857) is amended by-

4 (1) striking the text in paragraph (K) of Section 307(1) before (i), and inserting, “(K) to steal  
5 or to negligently and without authorization remove, damage, or tamper with-”;

6 (2) striking “or” at the end of paragraph (O) of Section 307(1);

7 (3) striking the period at the end of paragraph (P) of Section 307(1), and insert “;” in its  
8 place; and

9 (4) inserting after paragraph (P) of Section 307(1) the following new paragraphs-

10 “(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign  
11 commerce any fish taken, possessed, transported, or sold in violation of any treaty  
12 or foreign law;

13 “(R) to use any fishing vessel to engage in fishing in federal or state waters, or on the  
14 high seas or in the waters of a foreign nation, after the Secretary has made a payment  
15 to the owner of that fishing vessel under Section 312(b)(2); or

16 “(S) to attempt to commit any act described in paragraphs (A) through (R).”

17 (c) CIVIL ENFORCEMENT. – Section 308 (16 U.S.C. §1858) is amended by-

18 (1) striking “PENALTIES” in the heading of Section 308 and inserting “ENFORCEMENT”  
19 in its place;

20 (2) in subsection (a)-

21 (A) inserting “(1)” after “(a)”;

22 (B) inserting “CIVIL ADMINISTRATIVE” before “PENALTY”;

- 1 (C) striking "\$100,000" and inserting "\$240,000" in its place;
- 2 (D) striking "offense" and inserting "violation" in its place; and
- 3 (E) striking "offenses" and inserting "violations" in its place;
- 4 (3) redesignating existing subsection (b) of Section 308 as paragraph (2) under subsection
- 5 (a);
- 6 (4) redesignating existing subsections (e) and (f) of Section 308 as paragraphs (3) and (4)
- 7 under subsection (a), respectively;
- 8 (5) revising paragraph (4), as so redesignated, as follows-
- 9 (A) in the first sentence-
- 10 (i) insert "investigation or" before "hearing", and
- 11 (ii) strike "section" and insert "Act or any other marine resource law enforced by
- 12 the Secretary";
- 13 (B) in the second sentence, insert "for the purposes of conducting any hearing" after
- 14 "summoned";
- 15 (6) inserting the following new subsection after subsection (a) of Section 308-
- 16 "(b) IMPOSITION OF CIVIL JUDICIAL PENALTIES.-- Any person who violates any
- 17 provision of this Act, or any regulation or permit issued thereunder, shall be subject to
- 18 a civil penalty not to exceed \$300,000 for each such violation. Each day of a
- 19 continuing violation shall constitute a separate violation. The Attorney General, upon
- 20 the request of the Secretary, may commence a civil action in an appropriate district
- 21 court of the United States, and such court shall have jurisdiction to award civil
- 22 penalties and such other relief as justice may require. In determining the amount of a



1 civil penalty, the court shall take into account the nature, circumstances, extent, and  
2 gravity of the prohibited acts committed and, with respect to the violator, the degree  
3 of culpability, any history of prior violations, and such other matters as justice may  
4 require. In imposing such penalty, the district court may also consider information  
5 related to the ability of the violator to pay.”;

6 (7) redesignating existing subsections (c) and (d) of Section 308 as subsections (d) and (e),  
7 respectively; and

8 (8) inserting a new subsection (c) as follows-

9 “(c) Upon the request of the Secretary, the Attorney General may seek to enjoin any  
10 person who is alleged to be in violation of any provision of this Act, or regulation, or  
11 permit issued under this Act.”;

12 (9) striking subsection (d), as so redesignated, and inserting a new subsection as follows-

13 “(d) ACTION UPON FAILURE TO PAY ASSESSMENT. – If any person fails to pay an  
14 assessment of a civil penalty after it has become a final and unappealable order, or  
15 after the appropriate court has entered final judgment in favor of the Secretary, the  
16 matter may be referred to the Attorney General, who may recover the amount (plus  
17 interest at current prevailing rates from the date of the final order). In such action,  
18 the validity and appropriateness of the final order imposing the civil penalty shall  
19 not be subject to review. Any person who fails to pay, on a timely basis, the  
20 amount of an assessment of a civil penalty shall be required to pay, in addition to  
21 such amount and interest, attorney’s fees and costs for collection proceedings and a  
22 quarterly nonpayment penalty for each quarter during which such failure to pay

1 persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the  
2 aggregate amount of such person's penalties and nonpayment penalties that are  
3 unpaid as of the beginning of such quarter.”;

4 (10) redesignating existing subsection (g) of Section 308 as subsection (f);

5 (11) striking existing paragraphs (3) and (4) of subsection (f), as so redesignated, and  
6 inserting the following paragraphs-

7 “(3) Transfer of ownership of a vessel, a permit, or any interest in a permit, by sale or  
8 otherwise, shall not extinguish any permit sanction that is in effect or is pending at  
9 the time of ownership. Before executing the transfer of ownership of a vessel,  
10 permit, or any interest in a permit by sale or otherwise, the owner shall disclose in  
11 writing to the prospective transferee the existence of any permit sanction that will  
12 be in effect or pending with respect to the vessel, permit, or interest at the time of  
13 the transfer.

14 “(4) In the case of any permit that is suspended under this subsection for nonpayment of  
15 a civil penalty, criminal fine, or any amount in settlement of a civil forfeiture, the  
16 Secretary shall reinstate the permit upon payment of the penalty, fine, or settlement  
17 amount and interest thereon at the prevailing rate.”.

18 (d) CRIMINAL PENALTIES. – Section 309 (16 U.S.C. § 1859) is amended by-

19 (1) striking existing subsections (a), (b) and (c) of Section 309; and

20 (2) inserting the following-

21 “(a) Any person (other than a foreign government or any entity of such government) who  
22 knowingly violates Section 1857(1)(D), (E), (F), (H), (I), or (L) or Section 1857(2),

1           upon conviction, shall be imprisoned for not more than five years and shall be fined  
2           not more than \$500,000 for individuals or \$1,000,000 for an organization; except  
3           that if in the commission of any such offense the individual uses a dangerous  
4           weapon, engages in conduct that causes bodily injury to any observer described in  
5           Section 1857 of this title or any officer authorized to enforce the provisions of this  
6           chapter (as provided for in section 1861 of this title), or places any such observer or  
7           officer in fear of imminent bodily injury, the maximum term of imprisonment is not  
8           more than ten years.

9           “(b) Any person (other than a foreign government or any entity of such government) who  
10           knowingly violates any other provision of Section 1857 shall be fined under Title 18  
11           or imprisoned not more than five years or both.

12           “(c) The several district courts of the United States shall have jurisdiction over any  
13           actions arising under this Act. For the purpose of this Act, American Samoa shall be  
14           included within the judicial district of the District Court of the United States for the  
15           District of Hawaii. Each violation shall be a separate offense and the offense shall  
16           be deemed to have been committed not only in the district where the violation first  
17           occurred, but also in any other district as authorized by law. Any offenses not  
18           committed in any district are subject to the venue provisions of Title 18, Section  
19           3238.

20           “(d) Penalties pursuant to this section for fishing violations prohibited by section  
21           1857(1)(A), (B), (C), (G), (K) or section 1857(2)(B) committed in the Exclusive  
22           Economic Zone by a vessel other than a vessel of the United States shall be imposed

1 on a natural person only in accordance with international law.”.

2 (3) Sections 8(a) and (b) of the Lacey Act Amendments of 1981 (16 U.S.C. §3377(a) and (b))  
3 are repealed.

4 (e) CIVIL FORFEITURES. – Section 310(a) (16 U.S.C. § 1860) is amended by-

5 (1) striking "(other than any act for which the issuance of a citation under section 311(c) is  
6 sufficient sanction)"; and

7 (2) inserting after “United States” in the first sentence the following: “, except that no fishing  
8 vessel shall be subject to forfeiture under this section as a result of any act for which  
9 issuance of a citation under Section 311(c) is sufficient sanction”.

10 (f) ENFORCEMENT RESPONSIBILITY. – Section 311(a) (16 U.S.C. §1861) is amended by-

11 (1) in the first sentence, inserting “, as well as the provisions of any marine resource law  
12 administered by the Secretary,” after “The provisions of this Act”;

13 (2) in the second sentence-

14 (i) striking “State” before “agency”; and

15 (ii) inserting “of any State, Territory, Commonwealth, or Tribe” after “agency”.

16 (g) POWERS OF AUTHORIZED OFFICERS. – Section 311(b)(1) (16 U.S.C. §1861) is

17 amended by striking “Federal or State” before “agency”.

18 (h) PAYMENT OF STORAGE, CARE, AND OTHER COSTS. – Section 311(e)(1)(B) (16

19 U.S.C. §1861) is amended by-

20 (1) striking subparagraph (B) of Section 311(e)(1); and

21 (2) inserting as follows in its place-

22 “(B) a reward of up to and not exceeding 20 percent of the penalty or fine collected or

1           \$20,000, whichever is the lesser amount, to any person who furnishes information which  
2           leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any  
3           violation of any provision of this Act or any other fishery resource law enforced by the  
4           Secretary;”.

5   **SEC. 17. FISHERY PERMITTING AND REGISTRATION.**

6   (a) Section 303(b) (16 U.S.C. §1853) is amended by inserting after “(1)” the following-  
7       “consistent with the national program established in Section 401,”.

8   (b) Section 401 (16 U.S.C. §1881) is amended by-

9       (1) striking “REGISTRATION AND INFORMATION MANAGEMENT” in the heading of  
10       Section 401, and inserting “FISHERY PERMITTING AND REGISTRATION” in its  
11       place;

12       (2) striking existing subsections (a) through (g) of Section 401, and inserting the following  
13       new subsections-

14       “(a) Commercial Fisheries. – The Secretary shall establish and implement a uniform  
15       national program for permitting in commercial fisheries. The program shall  
16       standardize the requirements for vessel registration and permitting required by this  
17       Act, the Marine Mammal Protection Act (16 U.S.C. §1631 et seq.), and any other  
18       marine resource law implemented by the Secretary, and, with the permission of a  
19       State, any marine resource law implemented by such State.

20       “(b) Recreational Fisheries. – The Secretary shall establish and implement a uniform  
21       national program for registration of marine recreational fishermen.

22       “(1) Such program shall require the registration, including identification and contact

1 information, of individuals who engage in recreational fishing in the Exclusive  
2 Economic Zone, or for anadromous species or Continental Shelf fishery  
3 resources beyond such zone; and the payment of a fee for such registration. The  
4 program may provide for the registration of vessels that are used in recreational  
5 fishing in lieu of individual registration, provided that the ownership, operator,  
6 and identification of the vessel are included.

7 “(2) State Programs. - The Secretary may exempt recreational fishermen who are  
8 licensed, permitted, or registered under the laws of a State unless the Secretary  
9 determines that-

10 “(A) information available from the State program is insufficient to assist in  
11 completing marine recreational fisheries statistical surveys, or evaluating  
12 the effects of proposed conservation and management measures on marine  
13 recreational fisheries; or

14 “(B) that the State has not made available to the Secretary information that the  
15 State has concerning the licensed, permitted, or registered recreational  
16 fishermen and the harvests taken in marine recreational fisheries.

17 “(c) Any fees collected under this section shall be deposited into the Limited Access  
18 System Administration Fund established pursuant to Section 305(h)(5)(B).”

19 **SEC. 18. FISHING CAPACITY REDUCTION PROGRAM.**

20 Section 312 is amended by-

21 (a) striking existing paragraph (4) in subsection (a) of Section 312;

22 (b) striking subsections (b)-(e) of Section 312; and

1 (c) inserting the following new subsections-

2 "(b) FISHING CAPACITY REDUCTION PROGRAM. --

3 "(1) The Secretary may conduct a fishing capacity reduction program (referred to in this  
4 section as the "program") in a fishery under the authority of the Secretary, a  
5 Council, or a State if the Secretary determines that the program-

6 "(A) is necessary to improve either the fishery's conservation and management or  
7 the fishery's economic efficiency, stability, safety, well-being, organizational  
8 effectiveness, or subsequent rationalization;

9 "(B) is consistent with the Federal or State fishery management plan or program in  
10 effect for such fishery, as appropriate, and that the fishery management plan-

11 "(i) will prevent replacement of the fishing capacity that the program  
12 removes through a moratorium on new entrants, practicable restrictions on  
13 vessel upgrades, and measures that take into account any latent fishing  
14 capacity in the fishery's fleet; and

15 "(ii) establishes a specified or target total allowable catch or other  
16 measures that trigger fishery closure or adjustments; and

17 "(C) is cost-effective and, in the instance of a program involving an industry-fee  
18 system, prospectively capable of repaying any debt obligation incurred  
19 under section 1111 of title XI of the Merchant Marine Act, 1936.

20 "(2) The objective of the program shall be to obtain the maximum sustained reduction in  
21 fishing capacity at the least cost. That objective should be met in a minimum  
22 period of time. To achieve that objective, the Secretary is authorized to pay-

1 “(A) the owner of a fishing vessel, if the permit authorizing the participation of the  
2 vessel in the fishery is surrendered for permanent revocation and the vessel  
3 owner and permit holder relinquish any claim associated with the vessel or  
4 permit that could qualify such owner or holder for any present or future  
5 limited access system permit in the fishery for which the program is  
6 established and such vessel is-

7 “(i) scrapped; or

8 “(ii) subjected to title restrictions (including, but not limited to, loss of the  
9 vessel's fisheries endorsement) by the Secretary of the department in which  
10 the Coast Guard is operating, that permanently prohibit and effectively  
11 prevent its use in domestic fishing, or fishing on the high seas or in the waters  
12 of a foreign nation; or

13 “(B) the holder of a permit authorizing participation in the fishery, if such permit is  
14 surrendered for permanent revocation, and such holder relinquishes any claim  
15 associated with the permit and vessel used to harvest fishery resources under  
16 the permit that could qualify such holder for any present or future limited  
17 access system permit in the fishery for which the program is established.

18 “(3) Participation in the program shall be voluntary, but the Secretary shall ensure  
19 compliance by all who participate.

20 “(4) The harvester proponents of each program and the Secretary may consult, as  
21 appropriate, with interested parties during the development and implementation of  
22 any program under this section.



1 “(c) PROGRAM FUNDING. --

2 “(1) The program may be funded by any combination of amounts-

3 “(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939,  
4 (15 U.S.C. § 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

5 “(B) appropriated for the purposes of this section;

6 “(C) provided under an industry fee system established under subsection (d) and in  
7 accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

8 “(D) provided by any State or other public or private or non-profit organization.

9 “(2) All funds for the program, including any fees established under subsection (d), shall  
10 be paid into the fishing capacity reduction funds established under section 1111 of  
11 title XI of the Merchant Marine Act, 1936.

12 “(d) INDUSTRY FEE SYSTEM. --

13 “(1)(A) If an industry fee system is necessary to fund the program, the Secretary may  
14 conduct a referendum on such system. Prior to the referendum, the Secretary  
15 shall-

16 “(i) identify, to the extent practicable, and notify all permit or vessel owners  
17 who would be affected by the program; and

18 “(ii) make available to such owners information about the industry fee  
19 system describing the schedule, procedures, and eligibility requirements for the  
20 referendum; the proposed program; and the amount and duration and any other  
21 terms and conditions of the proposed fee system.

22 “(B) The industry fee system shall be approved if the referendum votes which are

1 cast in favor of the proposed system constitute at least a majority of the  
2 participants voting.

3 “(2) Notwithstanding section 304(d) and consistent with an approved industry fee system,  
4 the Secretary is authorized to establish such a system to fund the program and repay  
5 debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine  
6 Act, 1936. The fees for a program established under this section shall-

7 “(A) be determined by the Secretary and adjusted from time to time as the Secretary  
8 considers necessary to ensure the availability of sufficient funds to repay such  
9 debt obligations;

10 “(B) not exceed 5 percent of the ex-vessel value of all fish involved in the program  
11 harvested from the fishery for which the program is established;

12 “(C) be deducted by the first ex-vessel purchaser from the proceeds otherwise  
13 payable to the seller and accounted for and forwarded by such fish purchasers  
14 to the Secretary in such a manner as the Secretary may establish unless the  
15 Secretary determines that such fees should be collected from the seller; and

16 “(D) be in effect only until such time as the debt obligation has been fully paid.

17 “(e) PROGRAM IMPLEMENTATION. --

18 “(1) The Secretary shall propose and adopt framework regulations applicable to  
19 implementing all programs under this section.

20 “(2) The Secretary shall implement each program under this section by proposing and  
21 adopting regulations that shall, together with the framework regulations, establish  
22 each program and control its implementation.

1 “(3) The harvester proponents of each program shall, before the Secretary proposes such  
2 regulation, provide to the Secretary a proposed implementation plan that, among  
3 other matters-

4 “(A) proposes the types and numbers of vessels or permits that are eligible to  
5 participate in the program and the manner in which the program shall proceed,  
6 taking into account-

7 “(i) the requirements of this section;

8 “(ii) the requirements of the framework regulations;

9 “(iii) the characteristics of the fishery;

10 “(iv) the requirements of the applicable fishery management plan and any  
11 amendment that such plan may require to support the proposed program;

12 “(v) the general needs and desires of harvesters in the fishery;

13 “(vi) the need to minimize program costs; and

14 “(vii) other matters, including, but not limited to, the manner in which  
15 such proponents propose to fund the program to ensure its cost effectiveness,  
16 as well as any relevant factors demonstrating the potential for, or necessary to  
17 obtain, the support and general cooperation of a substantial number of affected  
18 harvesters in the fishery (or portion of the fishery) for which the program is  
19 intended; and

20 “(B) proposes procedures for program participation (such as submission of owner  
21 bids under an auction system or fair market-value assessment), including any  
22 terms and conditions for participation, that the harvester proponents deem to be

1 reasonably necessary to meet the program's proposed objectives.

2 “(4) The Secretary shall contract with each person participating in a program, and each  
3 such contract shall, in addition to including such other matters as the Secretary  
4 deems necessary and appropriate to effectively implement each program (including,  
5 but not limited to, penalties for contract non-performance) be consistent with the  
6 framework and implementing regulations and all other applicable law.

7 “(5) Each program not involving fair market assessment shall involve a reduction auction  
8 that scores the reduction price of each bid offer by the data relevant to each bidder  
9 under an appropriate fisheries productivity factor. If the Secretary accepts bids, the  
10 Secretary shall accept responsive bids in the rank order of their bid scores, starting  
11 with the bid whose reduction price is the lowest percentage of the productivity  
12 factor, and successively accepting each additional responsive bid in rank order until  
13 either there are no more responsive bids or acceptance of the next bid would cause  
14 the total value of bids accepted to exceed the amount of funds available for the  
15 program.

16 “(6) Each program shall proceed by the Secretary issuing invitations to bid setting out the  
17 terms and conditions for participation consistent with the framework and  
18 implementing regulations. Each bid that the Secretary receives in response to the  
19 invitation to bid shall constitute an irrevocable offer from the bidder.”.

## 20 **SEC. 19. FUNDING FOR FISHERY OBSERVER PROGRAMS.**

21 (a) NORTH PACIFIC RESEARCH PLAN. – Section 313 (16 U.S.C. § 1862) is amended–

22 (1) by striking subsections (a), (b), (c), (d), (e), and (i);

(2) by redesignating existing subsections (f), (g), and (h) of Section 313, as subsections (a), (b), and (c), respectively;

(3) by redesignating existing subsection (j) of Section 313 as subsection (d);

(4) in subsection (a), as so redesignated, by striking "and this section"; and

(5) in subsection (b), as so redesignated-

(A) by striking "North Pacific Fishery Observer Fund" and inserting "Fishery Observer Fund established under Section 403(e)"; and

(B) by striking "303(b)(10)" under paragraph (2)(A) and inserting "303(b)(8)" in its place.

(b) **OBSERVER PROGRAM FUNDING.** – Section 403 (16 U.S.C. § 1881(b)) is amended by-

(1) striking "GUIDELINES FOR CARRYING OBSERVERS" in the heading of subsection

(a), and inserting "GUIDELINES FOR OBSERVER SAFETY" in its place; and

(2) inserting after existing subsection (c) of Section 403 the following new subsections-

"(d) **OBSERVER PROGRAM FUNDING MECHANISM.**

“(1) The Secretary may establish a funding mechanism to cover the cost of an

observer program to monitor any fishery managed under this Act or any other

Act administered by the Secretary, including the Northern Pacific halibut

fishery.

“(2)(A) The Secretary may exercise broad discretion in developing a funding

mechanism under this subsection, which may include, but is not limited to, a

system of fees, payments collected from dedicated access privilege

programs, or any other cost recovery mechanism to pay for the cost of-

1 “(i) stationing observers on board fishing vessels and United States fish  
2 processors, and

3 “(ii) the actual cost of inputting collected data, less any amount received  
4 for such purpose from another source or from an existing surplus in the  
5 Fishery Observer Fund established in subsection (e).

6 “(B) The moneys collected under a funding mechanism established under this  
7 subsection for an observer program shall be-

8 “(i) deposited into the Fishery Observer Fund established by  
9 subsection (e); and

10 “(ii) used only for the observer program covering fisheries from  
11 which the moneys were collected.

12 “(3) Except where provided under subsection (d)(4), no new observer programs  
13 may be funded through direct contractual agreements between the owner or  
14 operator of a fishing vessel or United States fish processor and any non-  
15 governmental observer provider company.

16 “(4) Fishery management plans and regulations under this Act that currently allow  
17 for direct contractual agreements between the owner or operator of a fishing  
18 vessel or United States fish processor and any non-governmental observer  
19 provider company shall be evaluated by an independent peer review  
20 established by the Secretary to evaluate the accuracy, precision, and potential  
21 biases of data from the program. Based on the results of this and other  
22 germane reviews, the Secretary, in consultation with the Council, will

1 determine if changes to the contractual agreement program are required, and  
2 the time frames for implementing such changes.

3 “(e) FISHERY OBSERVER FUND. –

4 “(1) Establishment of Fund. – There is established on the books of the Treasury of  
5 the United States, a fund which shall be known as the Fishery Observer Fund  
6 (Fund). The Fund shall be administered by the Secretary (of Commerce). The  
7 Fund shall be available without appropriation or fiscal year limitation, only to the  
8 Secretary for the purposes of carrying out subsection (d). The Fund shall consist  
9 of all moneys deposited into it in accordance with this section, plus interest on  
10 those moneys.

11 “(2) Investment of Amount.

12 “(A) In general. – It shall be the duty of the Secretary of the Treasury to invest, at  
13 the direction of the Secretary of Commerce, such portion of the Fund that is  
14 not currently needed for the purposes of each observer program covering  
15 fisheries from which moneys were collected under subsection (d).

16 “(B) Authorized Investments. – Such investments shall be in public debt  
17 obligations with maturities suitable to the needs of the Fund, as determined  
18 by the Secretary of Commerce. Investments in public debt obligations shall  
19 bear interest at rates determined by the Secretary of the Treasury taking into  
20 consideration the current market yield on outstanding marketable  
21 obligations of the United States of comparable maturity.

22 “(3) Sale of Obligation. – Any obligation acquired by the Fund may be sold by the

1 Secretary of the Treasury at the direction of the Secretary of Commerce at  
2 market prices.

3 “(f) CONTRIBUTIONS. – For purposes of carrying out subsections (d) and (e), the  
4 Secretary may accept, solicit, receive, hold, administer, and use gifts, devises,  
5 contributions, and bequests. Funds collected under this subsection shall be deposited  
6 in the Fishery Observer Fund established by subsection (e).”.

7 **SEC. 20. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS.**

8 Section 111(b) of the Sustainable Fisheries Act (16 U.S.C. § 1855 note) is amended by amending  
9 paragraph (6) to read as follows-

10 “(6) For purposes of this subsection, 'Western Pacific community' shall mean a community  
11 eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens  
12 Fishery Conservation and Management Act (16 U.S.C. § 1855(i)(2)(B)(i) through (iv)).”.

13 **SEC. 21. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT.**

14 (a) CIVIL PENALTIES.- Section 8(a) of the Northern Pacific Halibut Act of 1982 (16 U.S.C.  
15 §773f(a)) is amended-

16 (1) by striking "\$25,000" and inserting "\$200,000";

17 (2) in the fifth sentence-

18 (A) by striking "violation" and inserting "violation";

19 (B) by striking "and history" and inserting "any history"; and

20 (C) by striking "ability to pay,"; and

21 (3) by adding at the end the following new sentence: "In assessing such penalty, the Secretary  
22 may also consider any information provided by the violator relating to the ability of the



1 violator to pay, provided that the information is served on the Secretary at least 30 days  
2 prior to an administrative hearing."

3 (b) PERMIT SANCTIONS.- Section 8 of the Northern Pacific Halibut Act of 1982 (16 U.S.C.  
4 §773f) is amended by adding at the end a new subsection to read as follows-

5 (e)(1) In any case in which-

6 "(A) a vessel has been used in the commission of any act prohibited under section 7;

7 "(B) the owner or operator of a vessel or any other person who has been issued or has  
8 applied for a permit under this Act has acted in violation of section 7; or

9 "(C) any amount in settlement of a civil forfeiture imposed on a vessel or other  
10 property, or any civil penalty or criminal fine imposed on a vessel or owner or  
11 operator of a vessel or any other person who has been issued or has applied for a  
12 permit under any marine resource law enforced by the Secretary has not been paid  
13 and is overdue, the Secretary may-

14 (i) revoke any permit issued with respect to such vessel or person, with or  
15 without prejudice to the issuance of subsequent permits;

16 (i) suspend such permit for a period of time considered by the Secretary to  
17 be appropriate;

18 (iii) deny such permit; or

19 (iv) impose additional conditions and restrictions on any permit issued to or  
20 applied for by such vessel or person under this Act and, with respect to any  
21 foreign fishing vessel, on the approved application of the foreign nation involved  
22 and on any permit issued under that application.

1 “(2) In imposing a sanction under this subsection, the Secretary shall take into account-

2 “(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the  
3 sanction is imposed; and

4 “(B) with respect to the violator, the degree of culpability, any history of prior  
5 offenses, and such other matters as justice may require.

6 “(3) Transfer of ownership of a vessel, a permit, or any interest in a permit, by sale or  
7 otherwise, shall not extinguish any permit sanction that is in effect or is pending at  
8 the time of transfer of ownership. Before executing the transfer of ownership of a  
9 vessel, permit, or interest in a permit, by sale or otherwise, the owner shall disclose  
10 in writing to the prospective transferee the existence of any permit sanction that will  
11 be in effect or pending with respect to the vessel, permit, or interest at the time of the  
12 transfer.

13 “(4) In the case of any permit that is suspended under this subsection for nonpayment of a  
14 civil penalty, criminal fine, or any amount in settlement of a civil forfeiture, the  
15 Secretary shall reinstate the permit upon payment of the penalty, fine, or settlement  
16 amount and interest thereon at the prevailing rate.

17 “(5) No sanctions shall be imposed under this section unless there has been prior  
18 opportunity for a hearing on the facts underlying the violation for which the sanction  
19 is imposed either in conjunction with a civil penalty proceeding under this section or  
20 otherwise.

21 “(6) For the purposes of this section, the term 'permit' means, without limitation, any  
22 license, certificate, approval, registration, charter, membership, exemption, or other

1 form of permission issued by the Commission or the Secretary, and includes any  
2 quota share or other transferable quota issued by the Secretary."

3 (c) CRIMINAL PENALTIES.- Section 9(b) of the Northern Pacific Halibut Act of 1982 (16  
4 U.S.C. §773g(b)) is amended-

5 (1) by striking "\$50,000" and inserting "\$200,000"; and

6 (2) by striking "\$100,000" and inserting "\$400,000".

7 **SEC. 22. MAINE POCKET WATERS.**

8 Section 808(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C.  
9 §5107a(a)) is amended by striking all after "Federal and State regulations:", and adding the  
10 following-

11 "(1) west of Monhegan Island in the area north of the line 43 degrees 42' 10.0"N, 69  
12 degrees 34' 16.0"W and 43 degrees 42' 15.0"N, 69 degrees 19' 18.0"W;

13 (2) east of Monhegan Island in the area located north of the line 43 degrees 44' 0.0"N, 69  
14 degrees 15' 05.0"W and 43 degrees 48' 10.0"N, 69 degrees 08' 01.0"W;

15 (3) southeast of Matinic Island in the area located north of the line 43 degrees 48' 10.0"N,  
16 69 degrees 08' 01.0"W and 43 degrees 44' 08.0"N, 69 degrees 53' 01.0"W;

17 (4) south of Vinalhaven Island in the area located west of the line 43 degrees 52' 18.5"N,  
18 68 degrees 40' 0.0"W, and 43 degrees 58' 10.5"N, 68 degrees 32' 57.0"W;

19 (5) south of Bois Bubert Island in the area located northwest of the line 44 degrees 19'  
20 16.5"N, 67 degrees 49' 30.0" W, and 44 degrees 23' 40.0"N and 67 degrees 40'  
21 30.0"W."

22 **SEC. 23. SPECIAL AREAS.**

1   Section 301(b) of Pub. L. 102-251 is repealed.

2   **SEC. 24. AUTHORIZATION OF APPROPRIATIONS.**

3   Section 4 (16 U.S.C. § 1803) is amended to read as follows-

4   “There are authorized to be appropriated to the Department of Commerce, for the purposes of  
5   carrying out this Act, \$328,004,000 in fiscal year 2006, and such sums as may be necessary for  
6   fiscal years 2007-2010.”